**Local 372, Service Employees International Union, AFL–CIO *and* Pepper Construction Company and Marshall Field & Company and International Union of Operating Engineers, Local Union No. 150, AFL–CIO.** Case 13–CD–311

July 12, 1982

## DECISION AND ORDER QUASHING NOTICE OF HEARING

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Pepper Construction Company, herein called the Employer, alleging that Local 372, Service Employees International Union, AFL–CIO, herein called Local 372, has violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activities with an object of forcing or requiring the Employer to assign certain work to employees represented by it rather than to employees represented by International Union of Operating Engineers, Local Union No. 150, AFL–CIO, herein called Local 150.

Pursuant to notice, a hearing was held before Hearing Officer William V. Killoran, Jr., on March 30 and April 1, 1982. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer and Local 150 filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

### I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Delaware corporation with a place of business in Illinois, is engaged in commercial and industrial construction. During the past calendar year, a representative period, the Employer purchased and received at its Illinois facility goods and services valued in excess of $50,000 directly from points outside the State of Illinois. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Local 372 and Local 150 are labor organizations within the meaning of the Act.

### III. THE DISPUTE

#### A. *Background and Facts of the Dispute*

The Employer has a long-term contract with Marshall Field & Company, herein called Field's, for construction, including alterations and renovations in Field's department stores. In October 1981 the Employer began a major remodeling project on the 11th floor of Field's State Street store in Chicago, and began using Field's existing freight elevators, operated by employees of Field's represented by Local 372, to hoist the materials used in this project. Local 150, which represents employees of the Employer who operate cranes, bulldozers, personnel hoists, and similar equipment on new construction sites, insisted that, pursuant to its collective-bargaining agreement, one of its members had to operate an elevator that hoisted materials for the 11th floor project. The Employer conveyed this demand to Field's, which refused to grant permission for anyone but its employees represented by Local 372 to operate its freight elevators. Local 150 then filed a grievance under its collective-bargaining agreement with the Employer.

On January 27, 1982, a joint grievance committee, in a proceeding to which neither Local 372 nor Field's was a party, awarded the work to an employee represented by Local 150 and also awarded backpay to compensate for the Employer's failure to so assign the work since October 1981. The Employer again requested Field's to permit an employee represented by Local 150 to operate a freight elevator. Field's forwarded the request to Local 372, which, by its attorney, responded by stating that, if a "non-Local 372 person" were assigned to that job, Local 372 "would immediately implement any and all of those remedies available to us under the contract, and the National Labor Relations Act which may include picketing and other forms of job action." Field's denied the Employer's (and Local 150's) request, and the Employer has not complied with the grievance award.

#### B. *The Work in Dispute*

The dispute concerns the assignment of the following work tasks:

> Operation of freight elevators used for hoisting construction equipment, materials, or workers to the site of remodeling work being performed by Pepper Construction Company

within a building owned or occupied by Marshall Field & Company, at 111 North State Street, Chicago, Illinois.

### C. *Contentions of the Parties*

Local 150 contends that the notice of hearing herein should be quashed because Local 150 effectively and unequivocally disclaimed the work in dispute at the conclusion of the hearing. It also contends that there is no reasonable cause to believe that a violation of Section 8(b)(4)(D) occurred because Local 372 threatened only to take such action as is permitted by law.

The Employer contends that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that Local 150's disclaimer is ineffective, being merely an attempt to avoid an authoritative determination of the dispute. The dispute assertedly being unresolved and properly before the Board for determination, the Employer further contends that the Board should award the work to Field's employees represented by Local 372.

### D. *Applicability of the Statute*

Section 10(k) of the Act, which directs the Board to hear and determine disputes out of which 8(b)(4)(D) charges have arisen, limits the Board's authority in this respect to situations in which an employer's assignment of work is in dispute. The Board has held, with Supreme Court approval, that a jurisdictional dispute no longer exists where one of the competing unions or parties effectively renounces its claim to the work. *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 262, AFL-CIO (Dyad Construction, Inc.)*, 252 NLRB 48 (1980), and cases cited therein. In light of the fact that Local 150 unequivocally has disclaimed interest in the disputed work, at the hearing and again in its brief to the Board, we find that there no longer exists a jurisdictional dispute within the meaning of the Act.[1] We shall therefore quash the notice of hearing issued herein.

## ORDER

It is hereby ordered that the notice of hearing issued in this case be, and it hereby is, quashed.

[1] The instant case is unlike those where the union purportedly disclaiming interest has taken action inconsistent with a good-faith disclaimer. See *Local Union No. 55, Sheet Metal Workers International Association, AFL-CIO (Gilbert L. Phillips, Inc.)*, 213 NLRB 479, 481 (1974).